IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12229 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARAYANBHAI MOTIBHAI PATEL - Petitioner(s)

Versus

CHANDUBHAI DHARMABHAI PATEL & 1 - Respondent(s)

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Appearance :

MR HM PARIKH for Petitioner(s) : 1,
MR MAHENDRA K PATEL for Respondent(s) : 1,
None for Respondent(s) : 2,
NOTICE SERVED for Respondent(s) : 2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5,2.2.6

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/09/2005

ORAL JUDGMENT

1. Rule. Shri Mahendra K. Patel, learned advocate waives service of rule on behalf of the respondents.

With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 17.3.2005 passed in Revision Application No.23 of 1999 in dismissing the said Revision Application confirming the order passed by the Collector, Mehsana dated 8.6.99 passed in RTS Revision Application NO.62 of 1994.

3. The dispute is with regard to the Entry No.2250 with respect to the land bearing Survey No.140/1, 140/2, 141/1-A, 141/2-B and 141/2-A paiki admeasuring Acres 5 – 08 Gunthas of lands. The aforesaid lands in question were original owned by one Patel Harvovan Gulabchand who sold the lands admeasuring Acres 2 – 2 Gunthas to the petitioners by

registered sale deed dated 30.1.1989 and accordingly on the basis of the registered sale deed, name of the petitioner came to be mutated in the revenue record vide Entry No.2250 which came to be certified on 4.2.89. It appears that there was some mistake and one supplementary and/or clarificatory agreement was entered into on the basis of which Entry No.2253 dated 11.2.1989 was mutated. After a period of five years, the respondent No.1 herein challenged the aforesaid Entries No.2250 and 2253 before the Prant Officer, Mehsana being RTS Case No.59 of 1990-91 and the said case came to be dismissed by Prant Officer, Mehsana by its order dated 18.5.94. Being aggrieved and dissatisfied with the order passed by the Prant Officer, Mehsana, the respondent No.1 preferred appeal before the Collector, Mehsana and the Collector, Mehsana by its order dated 8.6.1999 allowed the said appeal by quashing and setting aside the order passed by the Prant Officer dated 18.5.1994 as well as the quashing and setting aside the Entries No.2250 and 2253. Being aggrieved and dissatisfied with the order passed by the Collector, Mehsana dated

8.6.1988 in quashing and setting aside the Entries No.2250 and 2253, the petitioner preferred Revision Application No.23 of 1999 before the Secretary (Appeals), Revenue Department, State of Gujarat and the revisional authority by its judgment and order dated 17.3.2005 dismissed the said revision application confirming the order passed by the Collector, Mehsana dated 8.6.99 passed in RTS Revision Application No.62 of 1994. Being aggrieved and dissatisfied with the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 17.3.2005 the petitioner has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

4. Shri H.M.Parikh, learned advocate appearing on behalf of the petitioner has vehemently submitted that the Collector, Mehsana has materially erred in quashing and setting aside the Entry Nos.2250 and 2253 with regard to the lands in question as the said entries were on the basis of the registered sale deed in favour of the petitioner. He has also further

submitted that even the said entries were challenge after a period of two years and even the sale in favour of the petitioner came to be challenged by the respondent No.1 herein after period of ten years i.e. On 17th March, 1999 being Civil Suit No.32 of 1999. Relying upon the judgment of this Court in case of GANESHBHAI MANILAL MAYAVANSHI vs. STATE OF GUJARAT AND OTHERS reported in 2005 (9) Gujarat High Court Judgments, Shri Parikh, learned advocate has submitted that the revenue authority is bound to give effect to the registered sale deed in the revenue record, however, if there is any dispute, an additional entry can be made to the effect that the said entry would be subject to ultimate outcome of the suit if any and in the present case, Civil Suit No.32 of 1999 is pending between the parties and therefore, it is requested to allow the present special civil application.

5. Per contra, Shri Mahendra K. Patel, learned advocate appearing on behalf of the respondent No.1 has submitted that initial Entries were in breach of

Section-135(d) of the Bombay Land Revenue Code and the Rules and that original seller i.e. Patel Hargovand Gulabchand had no right to sell the land in question in favour of the petitioners and now there is already Civil Suit pending between the parties being Civil Suit No.32 of 1999 in which the aforesaid registered sale deeds have been challenged. It is submitted that in view of the aforesaid facts, when the Collector, Mehsan has set aside the Entries NO.2250 and 2253 and the same is confirmed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat, it cannot be said that there is illegality committed by the said authorities and therefore, it is requested to dismiss the present special civil applications.

6. It is not in dispute that the petitioner has purchased the land in question by registered sale deed dated 30.1.1989. It is also not in dispute that now Civil Suit is pending between the parties being Civil Suit No.32 of 1999 in which the respondent No.1 herein has prayed for cancelling the said sale deed

by which the petitioner has purchased the land in question. As held by the learned Single Judge of this Court in GANESHBHAI MANILAL MAYAVANSHI (Supra), when a person has purchase the property by registered sale deed, the revenue authority is bound to give effect to the said transaction which is by registered sale deed in the revenue record. However, if there is any dispute, an additional entry can be made with respect to the said entry to that effect that the same will be subject to ultimate outcome of the Civil Suit between the parties. In the present case as stated above, Civil Suit No.32 of 1999 is now pending before the Civil Court. Under the circumstances, considering the judgment of the learned Single Judge of this Court in case of GANESHBHAI MANILAL MAYAVANSHI (Supra) the order passed by the Collector, Mehsana dated 8.6.1999 passed in RTS Revision Application No.62 of 1994 as well as the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 17.3.2005 passed in Revision Application No.23 of 1999 in quashing and setting aside the Entries No.2250 and 2253 cannot be

sustained.

7. For the reasons stated above, the petition succeeds. The order passed by the Collector, Mehsana dated 8.6.1999 passed in RTS Revision Application No.62 of 1994 as well as the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State Government dated 17.3.2005 passed in Revision Application No.23 of 1999 are hereby quashed and set aside and Entries Nos.2250 and 2253 with regard to the land in question are restored. However, it is further directed to the revenue authority to make an additional entry in the said entries and / or to make an additional entry to the effect that the said entries will be subject to ultimate outcome of Civil Suit No.32 of 1999 pending between the parties before the Civil Court. It is also observed that the Entries on the basis of the judgment and decree that may be passed by the competent Civil Court, necessary effect will be given in the revenue record thereafter and the parties will be abide by such entries.

8. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R.Shah, J.]

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